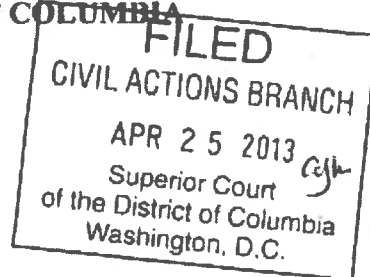


IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division



Adi

GROSVENOR URBAN RETAIL, L.P.
1701 Pennsylvania Avenue, N.W.
Suite 1050
Washington, D.C. 20006

Plaintiff,

v.

AARON GORDON

Arlington, Virginia 22207

Defendant.

Civil Action No _____

13 - 0002912

COMPLAINT

COMES NOW Plaintiff Grosvenor Urban Retail, L.P., by counsel, and for its Complaint against Defendant Aaron Gordon, states, claims and alleges as follows:

PARTIES

1. Plaintiff Grosvenor Urban Retail, L.P. ("Plaintiff") is a Delaware limited partnership authorized to do business as a foreign limited partnership in the District of Columbia and doing business in the District of Columbia at 1701 Pennsylvania Avenue, N.W., Suite 1050, Washington, D.C. 20006. Plaintiff is in the business of owning and operating commercial real estate in the District of Columbia and elsewhere.

2. Defendant Aaron Gordon ("Defendant") is an adult resident of Virginia residing at [REDACTED] Arlington, Virginia 22207, and conducting business as a restaurateur in the District of Columbia.



JURISDICTION, VENUE

3. The Court has subject matter jurisdiction over Plaintiff's claims pursuant to D.C. Code §11-921(a).

4. The Court has personal jurisdiction over Defendant pursuant to D.C. Code § 13-423, in that Defendant transacted business in the District of Columbia, contracted to guaranty a contract to be performed in the District of Columbia, and executed a Promissory Note in the District of Columbia.

5. Venue in this action properly lies in this Court insofar as the acts and omissions giving rise to this action took place in the District of Columbia.

STATEMENT OF FACTS

6. On or about November 19, 2007, a written Retail Lease was signed by Plaintiff (as Landlord) and Zeke's Ice Yogurt, LLC, for the retail lease of Suite S-1 in the building located at 2029 P Street, N.W., Washington, D.C. 20036 (the "Premises"). Defendant signed the Lease on behalf of Zeke's Ice Yogurt, LLC. A copy of the Retail Lease (the "Lease") is attached as **Exhibit 1**, and incorporated by reference.

7. In order to induce Plaintiff to enter into the Lease, on or about November 14, 2007, Defendant signed a Guaranty of Lease, which named him as Guarantor, and provides in part, as follows:

Aaron Gordon . . . unconditionally guarantees and promises to and for the benefit of Landlord that Tenant shall perform all of provisions of the Lease that Tenant is to perform.

8. The Guaranty of Lease also provides that,

A separate action may be brought or prosecuted against any Guarantor whether the action is brought or prosecuted against any other Guarantor or Tenant, or all, or whether any other Guarantor or Tenant, or all, are joined in the action.

9. The Guaranty of Lease also provides that,

The provisions of the Lease may be amended by agreement between Landlord and Tenant at any time, or by course of conduct, without the consent of or without notice to Guarantor. This Guaranty shall guarantee the performance of the Lease as modified. Assignment of the Lease (as permitted by the Lease) shall not affect this Guaranty.

10. In the event of default under the Lease, the Guaranty of Lease provides that,

If Tenant defaults under the Lease, Landlord may proceed immediately against Guarantor or Tenant, or both, or Landlord may enforce against Guarantor or Tenant, or both, any rights that it has under the Lease, or pursuant to applicable laws.

11. The Guaranty of Lease also provides that,

Guarantor waives the right to require Landlord to (1) proceed against Tenant; (2) proceed against or exhaust any security that Landlord holds from Tenant; or (3) pursue any other remedy in Landlord's power.

12. The Guaranty of Lease limits Defendant's liability as Guarantor as follows:

Guarantor's maximum liability under this Guaranty shall not exceed the equivalent of the Minimum Annual Rent and actual Additional Rent payable by Tenant under the Lease at the time of the Event of Default resulting in Landlord making a claim on this Guaranty over a thirty six (36) month period calculated from the date of such claim (the "Guaranty Cap").

13. The Guaranty of Lease also provides that,

If Landlord is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay to Landlord all costs incurred, including, without limitation reasonable attorneys' fees.

A copy of the Guaranty of Lease is attached as **Exhibit 2**, and by reference incorporated herein.

14. On or about May 22, 2008, Zeke's Ice Yogurt, LLC -- the original tenant under the Lease -- assigned all of its right, title and interest in the Lease to Counter Culture, LLC (hereafter "Tenant"), a Delaware limited liability company also affiliated with Defendant.

15. Counter Culture, LLC (as Tenant) sublet the premises to PKO Dupont, LLC, pursuant to a Sublease Agreement dated August 1, 2011, with Plaintiff's consent.

16. Subtenant PKO Dupont, LLC subsequently filed for bankruptcy and in connection therewith, rejected the Sublease.

17. As of January 1, 2013, Counter Culture, LLC (as Tenant) was in arrears under the Lease in the amount of \$52,868.81. Notwithstanding the arrearage, Counter Culture, LLC approached Plaintiff about retaking possession of the Premises in order to change the use of the Premises to the retail sale of gourmet donuts, cupcakes and coffee.

18. Accordingly, on or about January 23, 2013, a written Agreement and First Amendment to Retail Lease was signed by Plaintiff (as Landlord) and Counter Culture, LLC (as Tenant), and Defendant (as owner of Tenant and as Guarantor). The Agreement and First Amendment to Retail Lease specifically provides, "By executing this Agreement, Guarantor acknowledges and agrees that the Lease Guaranty remains in full force and effect with respect to the Lease as herein amended." A copy of the Agreement and First Amendment to Retail Lease is attached as **Exhibit 3**, and by reference incorporated herein.

19. In order to induce the Plaintiff to enter into the Agreement and First Amendment to Retail Lease and consent to Tenant's proposed change of use for the Premises, Defendant (a) delivered to Plaintiff a check in the amount of \$7,868.81 to be applied to the arrearage of \$52,868.81, and (b) executed and delivered a certain Promissory Note, whereby Defendant promised to pay to Plaintiff the sum of Forty Five Thousand Dollars (\$45,000) in 24 monthly installments of \$1,875 to Plaintiff, commencing February 1, 2013 and continuing on the first day of each and every month through and including January 1, 2015. A copy of said note is attached as **Exhibit 4**, and by reference incorporated herein.

20. Plaintiff is, and at all times herein mentioned was, the owner and holder of said Promissory Note.

21. The Promissory Note provides that no interest shall accrue on the Promissory Note provided Defendant made timely monthly installment payments; however, if any monthly installment payment was not timely paid,

(i) such installment shall thereafter accrue interest at the rate of 12% per annum until such installment(s) are paid in full. Interest shall be calculated on the basis of a 360-day year and shall be computed on the actual number of days elapsed; and (ii) Borrower [Defendant] shall pay a late charge to Note Holder in an amount equal to five percent (5%) of the overdue amount.

22. The Promissory Note also provides that,

In the event that the Note is not paid in full on or before the Maturity Date, or upon the occurrence of any other default under this Note (including without limitation, late payments of any monthly installment), Borrower agrees that at the election of the holder hereof and without notice, the principal sum and all accrued interest remaining unpaid hereunder shall become at once due and payable at the place of payment aforesaid.

23. Moreover, the Promissory Note provides that "Borrower [Defendant] promises to pay and reimburse the holder of this Note for all reasonable attorney's fees, costs and other expenses which the holder of this Note may expend or incur in the enforcement or collection of this Note."

24. In early January 2013, Tenant and Defendant began operating Zeke's DC Donutz in the Premises.

25. Beginning on or about January 28, 2013, Plaintiff advised Tenant and Defendant that Zeke's DC Donutz had caused and permitted unusual and objectionable odors to be produced upon and emanate from the Premises, which substantially interfered with operations of another tenant at 2029 P Street, N.W., Washington, D.C. 20036, which constituted a breach of the Lease.

26. On March 15, 2013, Plaintiff's counsel served a Notice of Event of Default on the Tenant (Counter Culture, LLC), which demanded that Tenant discontinue the production of unusual and objectionable odors upon and emanating from the Premises.

27. In breach of its contractual obligations to Plaintiff, Tenant (Counter Culture, LLC) has failed to discontinue the production of unusual and objectionable odors upon and emanating from the Premises.

28. In breach of his contractual obligation to Plaintiff, Defendant has failed to ensure that Tenant shall perform all the provisions of the Lease that Tenant is to perform, including discontinuing the production of unusual and objectionable odors upon and emanating from the Premises.

29. In addition, in further breach of his contractual obligations, Defendant failed to ensure that Tenant made the payment of \$7,878.63 owed under the Agreement and First Amendment to Lease to Plaintiff.

30. In addition, in further breach of his contractual obligations, Defendant has not paid to Plaintiff the sums due under the Promissory Note, except for one payment of \$1,875.

31. In further breach of his contractual obligations to Plaintiff, Defendant has failed to ensure that all sums, including rent, fees and other amounts due under the Lease, owed by Counter Culture, LLC as Tenant under the Lease, have been promptly paid in full to Plaintiff when due.

32. Plaintiff has incurred costs, including reasonable attorneys' fees, in the course of enforcing Guarantor's obligations by legal proceedings, and continues to incur reasonable attorneys' fees in connection therewith.

COUNT ONE: BREACH OF GUARANTY OF LEASE
(Aaron Gordon)

33. Plaintiff incorporates by reference the factual allegations set forth above as if they were fully repeated here.

34. Defendant has not paid, and still refuses to pay, the amounts owed to Plaintiff under the Agreement and First Amendment To Retail Lease, which amount now totals at least \$88,996.68, and consists of the following:

- (a) the amount in arrears under the Agreement and First Amendment to Retail Lease (\$50,993.81), including the \$45,000 Promissory Note executed by Defendant;
- (b) late fee (5%) on March and April 2013 installments (\$187.50);
- (c) interest (12% per Annum) on March and April 2013 installments (\$75.00);
- (d) Minimum Annual Rent and Additional Rent for February-April 2013 (\$22,717.93), pursuant to the Guaranty of Lease;
- (e) late fees for February-April 2013 (\$1,135.89), pursuant to the Guaranty of Lease;
- (f) interest charges (prime rate + 5%) for February-April 2013 (\$1,967.94), pursuant to the Guaranty of Lease;
- (g) late fees (5%) for July 2012 through January 2013 rent payments (\$10,477.89); and
- (h) interest charges (prime rate + 5%) for July 2012 through January 2013 (\$1,440.71).

35. Defendant further breached the Guaranty of Lease because Counter Culture, LLC failed to stop and refuses to stop unusual and objectionable odors to be produced upon and emanate from the Premises, which substantially interfere with the operations of another tenant at 2029 P Street, N.W., Washington, D.C. 20036, in violation of the Lease.

36. As a result of Defendant's breach of the Guaranty of Lease, Plaintiff has suffered damages of at least \$88,966.68, as aforesaid, which continue to accrue, and Plaintiff has incurred legal fees of at least \$10,000, which continue to accrue, in the course of taking legal action under the Lease and Guaranty of Lease.

WHEREFORE, Plaintiff Grosvenor Urban Retail, L.P. respectfully prays that this Honorable Court enter judgment in favor of the Plaintiff Grosvenor Urban Retail, LP and against Aaron Gordon, Guarantor, in an amount not less than \$98,966.68, the exact amount to be proven at trial, and grant Plaintiff such other and further relief that the Court deems just and appropriate.

Respectfully submitted,

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